

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BANK OF MONTREAL,

Plaintiff,

- against -

OPTIONABLE, INC., MF GLOBAL INC.,
KEVIN P. CASSIDY, EDWARD J. O'CONNOR,
MARK A. NORDLICHT, RYAN B. WOODGATE,
SCOTT CONNOR and JOSEPH D. SAAB,

Defendants.
-----X

No. 09-CV-7557 (GBD) (JLC)

**MEMORANDUM OF LAW OF PLAINTIFF BANK OF MONTREAL AND
SETTLING DEFENDANTS OPTIONABLE, INC., EDWARD J. O'CONNOR,
MARK A. NORDLICHT, AND SCOTT CONNOR IN SUPPORT OF THEIR
JOINT MOTION TO DISMISS WITH PREJUDICE (1) BMO'S CLAIMS
AGAINST THE SETTLING DEFENDANTS AND (2) CONNOR'S CLAIMS
AGAINST THE SETTLING DEFENDANTS AND KEVIN P. CASSIDY**

Plaintiff Bank of Montreal ("BMO") and defendants Optionable, Inc.
("Optionable"), Edward J. O'Connor, Mark A. Nordlicht, and Scott Connor (the "Settling
Defendants," and together with BMO, the "Settling Parties") respectfully submit this
memorandum of law in support of their joint motion pursuant to Rule 41(a)(2) for an order
dismissing with prejudice (1) BMO's claims against the Settling Defendants; and (2) Connor's
cross-claims against Optionable, O'Connor, Nordlicht, and non-settling defendant Kevin P.
Cassidy.

STATEMENT OF RELEVANT FACTS AND AUTHORITIES

The Settling Parties have settled and resolved all claims and disputes among
them, and therefore move this Court for an Order pursuant to Rule 41(a)(2) dismissing all claims

among them, as well as Connor's cross-claims, with prejudice. The relief, if granted, would terminate this litigation as among the Settling Parties.

"If the plaintiff moves for an order under Rule 41(a)(2) for voluntary dismissal, specifically requesting that the dismissal be with prejudice, it has been held that the district court must grant that request." 9 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2367, at 551 (3d ed. 2008) (footnote omitted; citing cases). In such circumstances, this Court's discretion "is quite limited." *Chevron Corp. v. Donziger*, No. 11-CV-691, 2013 WL 1481813, at *4 (S.D.N.Y. Apr. 8, 2013). See *Villa Glas G.m.b.H. v. Everstone Pty. Ltd.*, No. 06-CV-420, 2007 WL 2126296, at *1 (M.D. Fla. July 23, 2007) ("The Court's research has uncovered only a few instances in which a plaintiff's motion for dismissal with prejudice has been denied. In those cases, the courts have generally found that the dismissal would negatively affect third parties.").

The Settling Defendants join this motion. The remaining defendants, MF Global Inc. (through its Liquidation Trustee), Joseph D. Saab, and Cassidy, have advised the Settling Parties that they do not oppose this motion. Finally, granting this motion will give effect to the Settling Parties' agreement to resolve this litigation as among them and the courts' "salutary policy of encouraging the quieting and settlement of controversies." *Goldlawr, Inc. v. Shubert*, 32 F.R.D. 467, 469 (S.D.N.Y. 1962).

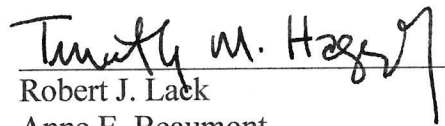
CONCLUSION

For the foregoing reasons, the Settling Parties respectfully request that the Court enter an order pursuant to Rule 41(a)(2) dismissing with prejudice (1) BMO's claims against the Settling Defendants and (2) Connor's cross-claims against Optionable, O'Connor, Nordlicht, and Cassidy.

Dated: New York, New York
January 3, 2014

Respectfully submitted,

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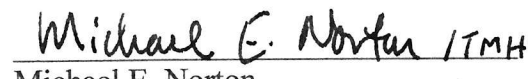
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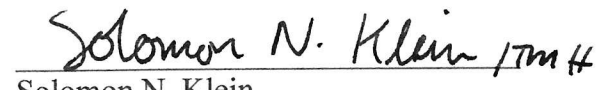
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